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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,411	10/08/2003	Fred Sanford	12780-023001 / 02,003	4319
26171	7590	12/30/2005	EXAMINER	
FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			JARRETT, RYAN A	
			ART UNIT	PAPER NUMBER
			2125	
DATE MAILED: 12/30/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/680,411	Applicant(s) SANFORD ET AL.	
	Examiner Ryan A. Jarrett	Art Unit 2125	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20,22-29 and 38-46 is/are pending in the application.
- 4a) Of the above claim(s) 11-20,22-29 and 38-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C.

121:

- I. Claims 1-10, drawn to an apparatus for monitoring performance of an industrial process.
- II. Claims 11-17, drawn to a method of optimizing industrial production comprising splitting the data stream transmitted from field devices into individual process parameter data.
- III. Claims 18-20 and 22-29, drawn to a method of optimizing industrial production comprising initiating adjustments to a field device controller for each field device with offsite process experts through instructions sent to an on-site service portal and based on an analysis of the field device data performed by the offsite process experts.
- IV. Claims 38-46, drawn to a system for monitoring performance of an industrial process.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice.

The inventions are distinct if it can be shown that either: (1) the process as

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claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the method of Group II can be practiced by an apparatus that does not require a block configurator for controlling application object data generated for at least one workstation from a central location, or a remote collector that collects application object data from at least one workstation associated with process field devices, as is required by the apparatus of Group I.

Inventions I and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the method of Group III can be practiced by an apparatus that does not require a block configurator for controlling application object data generated for at least one workstation from a central location, or a remote collector that collects application object data from at least one workstation associated with process field devices, as is required by the apparatus of Group I.

Inventions I and IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention IV has separate utility such as in a system containing a workstation block processor that creates application objects from application object files controlled by a

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service portal processor, initializes the application objects, and defines data probes. See MPEP § 806.05(d).

Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention III has separate utility such as in a method that initiates adjustments to a field device controller for each field device with offsite process experts through instructions sent to an on-site service portal and based on an analysis of the field device data performed by the offsite process experts. See MPEP § 806.05(d).

Inventions II and IV are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case method of Group II can be practiced by an apparatus that does not require a workstation block processor that creates application objects from application object files controlled by a service portal processor, initializes the application objects, and defines data probes, as is required by the apparatus of Group IV.

Inventions III and IV are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case method of Group III can be

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practiced by an apparatus that does not require a workstation block processor that creates application objects from application object files controlled by a service portal processor, initializes the application objects, and defines data probes, as is required by the apparatus of Group IV.

3. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Groups II, III, and IV (and vice-versa), restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

4. During a telephone conversation with Matthew Shanley on 12/21/05 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-10. Affirmation of this election must be made by applicant in replying to this Office action. Claims 11-20, 22-29, and 38-48 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship

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must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Drawings

6. The formal drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: reference number 240 on page 8 line 32 (this reference sign is included in the informal drawings). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1, 2, and 4-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Eryurek et al. U.S. Patent No. 6,795,798. Eryurek et al. discloses:

1. An apparatus for monitoring performance of an industrial process comprising: a service portal (e.g., Fig. 1 #30, Fig. 2 #50) for collecting, transmitting and analyzing parameter data from process field devices comprising:

a network connection (e.g., Fig. 1 #32) that connects to a process control system of the industrial process (e.g., col. 6 line 60 – col. 8 line 14, Fig. 1 #12A, 12B, 18, 14A, 14B, 22, 26);

a remote collector (e.g., col. 8 line 15 – col. 9 line 44, col. 11 lines 16-40, Fig. 1 #30, Fig. 2 #50) that collects parameter data from process field devices (e.g., col. 6 line 60 – col. 8 line 14, Fig. 1 #15, 16, 20, 25) and application object data (e.g., col. 12 lines 46-52: “a performance index, a utilization index, a health index and a variability index associated with one or more of the devices”, col. 28 line 1 – col. 29 line 15) from at least one workstation associated with the process field devices;

a processor that identifies, sorts, and stores the collected parameter data (e.g., col. 8 line 15 – col. 9 line 44, col. 11 lines 16-40, Fig. 1 #30, Fig. 2 #50);

a communications module for transmitting the stored parameter data to a remote monitoring station for analysis (e.g., Fig. 1 #40, col. 8 lines 40-44, Fig. 32 #914, Fig. 33); and

a block configurator (e.g., col. 9 lines 24-31: “index generation software”) for controlling application object data (e.g., col. 9 lines 24-31: “that creates indexes associated with devices”) generated for the at least one workstation from a central location.

2. The apparatus of claim 1 wherein the network connection is a wireless network collection (e.g., col. 12 lines 6-19).

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4. The apparatus of claim 1 wherein the network connection is a radio frequency network (e.g., col. 12 lines 6-19).

5. The apparatus of claim 1 wherein the remote collector (e.g., Fig. 1 #30) collects the parameter data from a workstation (e.g., Fig. 1 #12A, 18, 14A, 22, 26).

6. The apparatus of claim 1 wherein the processor performs simple analysis of the parameter data (e.g., col. 8 line 15 – col. 9 line 44, col. 11 lines 16-40).

7. The apparatus of claim 1 wherein the processor performs trends analysis of the parameter data (e.g., col. 31 lines 8-19).

8. The apparatus of claim 1 wherein the processor performs statistical analysis of the data (e.g., col. 22 lines 45-62).

9. The apparatus of claim 1 wherein the processor models the parameter data (e.g., Fig. 2 #56).

10. The apparatus of claim 1 wherein the processor develops a simulation of the process (e.g., col. 5 lines 30-34, col. 17 lines 8-19, Fig. 3, Fig. 4).

9. Claims 1 and 3 are rejected under 35 U.S.C. 102(e) as being anticipated by Eryurek et al. US 2005/0037249. Eryurek et al. discloses:

1. An apparatus for monitoring performance of an industrial process comprising: a service portal (e.g., Fig. 1 #30, Fig. 2) for collecting, transmitting and analyzing parameter data from process field devices comprising:

a network connection (e.g., Fig. 1 #32) that connects to a process control system of the industrial process (e.g., [0064]-[0069], Fig. 1 #12A, 12B, 18, 14A, 14B, 22, 26);

a remote collector (e.g., [0070]-[0083], Fig. 1 #30, Fig. 2 #50) that collects parameter data from process field devices (e.g., [0064]-[0069], Fig. 1 #15, 16, 20, 25) and application object data (e.g., [0140]: “a utilization index, performance index, a variability index) from at least one workstation associated with the process field devices;

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a processor that identifies, sorts, and stores the collected parameter data (e.g., [0070]-[0083], Fig. 1 #30, Fig. 2); and

a block configurator (e.g., [0078]: "index generation software") for controlling application object data (e.g., [0078]: "that collects or creates indexes associated with devices") generated for the at least one workstation from a central location.

a communications module for transmitting the stored parameter data to a remote monitoring station for analysis (e.g., Fig. 1 #40, [0071]).

3. The apparatus of claim 1 wherein the network connection is an optical network connection (e.g., [0070], [0109]).

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

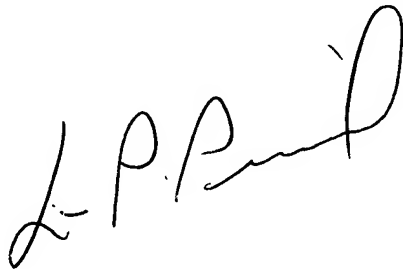
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan A. Jarrett whose telephone number is (571) 272-3742. The examiner can normally be reached on 10:00-6:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on (571) 272-3749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'L. P. Jarrett', written in a cursive style.

Ryan A. Jarrett
Examiner
Art Unit 2125

12/23/05
RAJ

LEO PICARD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100